

GEORGE T. MCDONALD

IBLA 74-302

Decided December 19, 1974

Appeal from decision by District Manager, Medford, Oregon District, Bureau of Land Management, rejecting a grazing lease application (OR-11-74-1).

Affirmed.

1. Grazing Leases: Generally -- Grazing Leases: Applications -- Grazing Leases: Renewal

A decision renewing a grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

2. Grazing Leases: Generally -- Grazing Leases: Applications

To qualify for a section 15 grazing lease of federal lands an applicant must be engaged in the livestock business at the time of his application.

APPEARANCES: George T. McDonald, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

George T. McDonald has appealed from a decision by the Manager of the Medford, Oregon, District of the Bureau of Land Management, dated April 5, 1974, which rejected his application for a grazing lease of sec. 5, T. 37 S., R. 2 E., W.M., Oregon, and granted the conflicting application of Devonacres Ranch for renewal of its existing lease of such lands. The applications were filed under the authority of section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). Both appellant and Devonacres Ranch are

preference right applicants by virtue of ownership or lease of private lands contiguous to the federal lands desired to be leased. 43 U.S.C. § 315m (1970); 43 CFR 4121.2-1(c)(1).

The District Manager found that, because the lands have a carrying capacity of only 33 AUM's, it would not be practical to divide the area in conflict. In compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), he based his decision upon "consideration of preference rights, proper range management, proper use of preference lands, general needs of the applicant[s], historical use and review of the facts presented."

[1] We can discern no reason to compel us to take the grazing use of the lands from Devonacres Ranch and confer it upon appellant. A decision renewing a grazing lease and rejecting a conflicting application, rendered in accordance with the governing regulatory standard, will not be overturned in the absence of convincing reasons that the award is not warranted. See John Ringheim, 10 IBLA 270, 274 (1973); Dick Reckmann, 8 IBLA 227, 229-30 (1972); cf. Victor Powers, 5 IBLA 197, 201 (1972). In this case such reasons have not been shown.

Information contained in the record raises the question of whether, in any event, appellant is qualified to receive a grazing lease. The regulation prescribing qualifications of lessees provides that an individual applying for a grazing lease is qualified if "[h]e is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States." 43 CFR 4121.1-1(a).

Appellant asserts that he has a need for the grazing use of the land, but he has furnished no evidence that he is presently engaged in the livestock business. On the contrary, his application shows that, although he possesses a registered brand, he neither owns nor controls any livestock. Notations on two previous unsuccessful applications for leases filed by appellant indicate that he had probably not owned or controlled any livestock for a period of nearly five years prior to the date of his current application. On each of the three occasions since 1968 when he has applied for a lease, appellant has stated that he intends to purchase livestock contingent upon his being awarded the lease.

[2] The requirement that, in order to be awarded grazing lease on federal land under the Taylor Grazing Act, an applicant must be engaged in the livestock business at the time of his application is mandated by the regulation. See Ruth E. Han, 13 IBLA 296, 303-04, 80 I.D. 698, 701 (1973). The fact that an applicant has been engaged in the livestock business in the past or that he intends to purchase livestock provided that he obtains a lease

may not be sufficient. ^{1/} We need not decide the issue of appellant's qualifications at this time, but such issue should be resolved by the application delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Manager rejecting the application of George T. MacPherson.

MacPherson is an applicant must be engaged in the livestock business also in the regulations governing qualifications for awards of grazing licenses and permits within grazing districts, under section 3 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315b (1970). 43 CFR 4111.1-1(a). The Department has held that a person applying for a grazing license or permit is not a qualified applicant unless he is engaged in the livestock business on the date of his application. John F. MacPherson, IGD 566, 567-68 (1952). In Myrtle Colvin, IGD 245, 250-51 (1941), it was held that an applicant must own livestock in order to qualify for a grazing license. An exception is recognized when the failure of a livestock operator to show ownership at the time of application was either temporary or due to circumstances beyond his control, i.e., losses through disease, foreclosure, fire or other cause.

